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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

YUKI LEE, in her capacity as
personal representative of the
Estate of her deceased husband,
JOOCHAN LEE, individually
and Decedent's surviving wife,
and in her capacity as Guardian
of their minor daughter, A.L.
both as beneficiaries and heirs of
Decedent's estate,

Plaintiffs,

vs.

THE MOODY BIBLE
INSTITUTE OF CHICAGO, and
Illinois corporation,

Defendant.

No. 2:19-cv-00326-SAB

**DEFENDANT'S LCivR
56(c)(1)(A) STATEMENT
OF MATERIAL FACTS
NOT IN DISPUTE**

Without Oral Argument
March 4, 2022

1 Pursuant to Local Civil Rule 56(c)(1)(A), Defendant The Moody
2 Bible Institute of Chicago ("Moody Bible"), by and through its
3 attorneys, hereby submits its Statement of Material Facts not in
4 Dispute as follows:

5
6 1. The matter arises out of a fatal airplane accident that
7 occurred on July 13, 2018. Plaintiffs' Decedent ("Mr. Lee") was a
8 passenger on the subject aircraft at the time of the accident. [ECF
9 No. 2 at 5 – 12]

10 2. As confirmed by Plaintiffs' liability expert, "the cause of
11 the crash was a bird strike." (See **Exhibit A** to the
12 contemporaneously-filed Declaration of Counsel in Support of Motion
13 for Summary Judgment ("Counsel Decl."), a true and correct copy of
14 which is also attached to this Statement of Material Facts pursuant
15 to LCivR 56(c)(1))

16
17 3. On August 29, 2019, Plaintiffs filed a Complaint for
18 Wrongful Death against Moody Bible in the Superior Court of the
19 State of Washington in and for the County of Spokane. [ECF No. 2 at
20 5 – 12] The Complaint does not allege gross negligence. [Id.]

21
22 4. Moody Bible timely removed the matter to this Court. [See
23 ECF No. 1]

24 5. On September 30, 2019, Moody Bible filed its Answer and
25 Affirmative Defenses whereby it denied all substantive allegations
26 against it. [See ECF No. 5]
27

1 6. Moody Bible admitted it owned and operated Moody
2 Aviation, which operated under The Moody Bible Institute of
3 Chicago. [ECF No. 5 at 3]
4

5 7. Mr. Lee was enrolled as a student in Moody Bible's
6 aviation program seeking a degree in Aviation Technology as a pilot.
7 [ECF No. 2 at 5 – 12; ECF No. 5 at 5]

8 8. In its Affirmative Defenses, Moody Bible alleged that
9 "Plaintiffs' decedent assumed the risk of participating in flight
10 activities, covenanted not to sue, and expressly waived liability as to
11 Moody Bible and its respective employees." [ECF No. 5 at 17]
12

13 9. Mr. Lee voluntarily agreed to the terms and conditions
14 contained in the Moody Aviation Flight and/or Maintenance
15 Activities Covenant Not to Sue, Liability Release, and Assumption of
16 Risk Agreement ("Release"). (See **Exhibit B** to the Counsel Decl., a
17 true and correct copy of which is also attached to this Statement of
18 Material Facts pursuant to LCivR 56(c)(1))
19

20 10. Mr. Lee voluntarily agreed to release, waive, and hold
21 harmless Moody Bible from any claim, demand or lawsuit by him, his
22 family, estate, heirs, or assigns, arising out of his participation in
23 flying aircraft, flying in aircraft, and flight instruction ("Aircraft
24 Activities"), including claims arising during any course of training or
25 after he received his pilot certification or arising from being a
26 passenger incident to Aircraft Activities, for any injuries, including
27

1 death, and for any loss or damage to property related to his
2 participation in Aircraft Activities. (Id.)

3 11. Mr. Lee affirmed that he was “aware that flying and
4 maintenance activities associated with them have inherent and
5 unforeseeable risks which may occur in serious injury or death.” (Id.)
6

7 12. Mr. Lee further affirmed and agreed that Moody Bible, as
8 one of the “Released Parties,” “shall NOT be held liable or responsible
9 in any way for any injury, death or damages to me, my family, estate,
10 heirs, or assigns that may occur as a result of or related to my
11 participation in flying aircraft, flying in aircraft, flight instruction . .
12 . or as a result of the negligence of any party, including the Released
13 Parties, whether passive or active, direct or indirect.” (Id.)
14

15 13. Plaintiff Yuki Lee is the widow of Mr. Lee. [ECF. No. 2 at
16 6]; (See, also, the transcript of the November 19, 2021, deposition of
17 Yuki Lee (“Lee Depo.”), p. 13, *l* 19, the pertinent pages of which are
18 attached to the Counsel Decl. as **Exhibit C**)
19

20 14. A.I. is the minor daughter of Mr. Lee, and both A.I. and
21 Yuki Lee are heirs of Mr. Lee. [ECF. No. 2 at 6]

22 15. Ms. Lee testified that she was familiar with Mr. Lee’s
23 signature. She further testified that the signature depicted on the
24 Release appeared to be that of Mr. Lee. (Lee Depo., p. 34, *ll* 21 – 23;
25 p. 44, *ll* 19 – 24)
26
27

Submitted this 10th day of January, 2022,

KSB LITIGATION, P.S.

By: /s/ William C. Schroeder

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EXHIBIT A

RULE 26 REPORT

OF

PETER R. LEFFE

I, Peter R. Leffe, BsMe, M.Arch, ATP, do hereby swear, testify, declare, and affirm as follows:

I was retained by Hermann Law Group of Seattle, Washington as an Aviation Accident Investigator and potential expert witness in the field of Aviation Accident Investigation and Reconstruction. The case is the Estate of Joochan Lee v. Moody Bible College of Chicago. Originally, I was retained to review records and then examine the aircraft wreckage to identify any specific signatures on the wreckage. The purpose of this was to find any possible mechanical, electrical, design or overload fault(s) that could have caused the subject accident. As a retained expert and I was asked to provide a Federal Rule of Civil Procedure Rule 26 Report which outlines and detailed all the opinions I formed regarding the subject incident.

Qualifications:

I have extensive knowledge, education, experience, training and skill in the areas of Mechanical Engineering, aviation accident investigation, accident reconstruction, aircraft construction maintenance and repair which all provide reliable foundation for each of my opinions.

Regarding my education and training, I hold the degree of Bachelor of Science in Mechanical Engineering with Metallurgy from the Indiana Institute of Technology. I am qualified to evaluate various types of mechanical systems to determine how they were designed, how they work, how they are tested and how they fail. Also, as a result of this degree, I am readily familiar with different types of forces (i.e.: tensile, compressive, torsional force, etc.) and how said forces effect different types of materials and components within mechanical systems. Finally, I am qualified to read and understand design drawings, testing materials and reports pertaining to various aircraft systems.

I have also received formal training in the area of aircraft accident investigation through the School of Engineering at the University of Southern California. This course was designed and created based upon the United States Air Force aircraft accident investigation manual, which was written by the staff at the Air Force Inspection and Safety Center.

Furthermore, from the beginning of my work on this case through the present, I have applied the scientific methodology outlined in both the USC School of Engineering Aircraft Accident Investigation course materials and upon the United States Air Force aviation accident investigation manual, while investigating this accident.

Graduates of the USC course, such as myself, are educated and familiarized with all aspects of the investigation process, starting with preparation for investigation through report writing. Investigative techniques are examined with an emphasis on fixed wing investigation. Data collection, wreckage reconstruction and cause analysis are also studied. Finally, the course also covers the National Transportation Safety Board and International Civil Aviation Organization (ICAO) procedures. This course of study is compliant with ICAO Annex 13 training guidelines for aviation accident investigators and graduates of this program are qualified to conduct aviation accident investigation in 190 countries worldwide.

It is my opinion that the cause of the crash was a bird strike.

Basis for this opinion is the NTSB factual report, my inspection of the aircraft wreckage, consultation with Dr. Banjac regarding the strength of the subject windshield, Pilots Flight Manual for the Cessna 17R aircraft, Airman's Information Manual and my education, training and experience.

The flight manual clearly outlines the consequences of a bird strike on the subject aircraft. A small hole could be plugged but with the collision with a large bird the impact force would more likely than not implode the entire windshield. It is clear that the aircraft could not maintain flight without the windshield. The total implosion of the windshield would more likely than not incapacitate the pilot and result in a loss of control of the aircraft.

The NTSB report clearly documents the bird strike with a Great American Pelican the second largest bird in North America. DNA was used to establish the type of bird and Dr. Banjac's calculations provide an understanding of the force exerted on the windshield of a single bird strike. It has been my experience observing pelicans in flight that they fly in formations to take advantage of "drafting" the leading bird. This fact could lead to a multiple bird strike or a strike at an oblique angle where the bird did not pass through the propeller and its full mass impacted the windshield.

It is my opinion upon a through physical inspection of the aircraft wreckage that there were no other probable cause(s) such as engine, propeller or control system failure that could have led or could to the crash and subsequent loss of life.

Basis of the formation of this opinion was my inspection of the aircraft wreckage the NTSB Factual Report, USC Aviation Accident Investigation training course and my general education, training and experience.

I inspected the engine or signatures associated with the catastrophic failure of the engine. The component parts, pistons, rings, cylinder wall, connecting rods, crankshaft, valves, etc., were all in excellent operational condition. As well, the loss of the engine would NOT result in a loss of control of the aircraft. The aircraft was capable of gliding approximately ten (10) miles from its flight altitude had it lost engine power.

I inspected the propeller which is a fixed pitch type with no moving parts. It was recovered in the wreckage pile and was not lost in flight.

I inspected the control cables of all flight controls. While the cables were broken those breaks could be associated with the loss of the outer sections of wing from exceeding the Vne (speed not to exceed) and Vdive (max speed in a dive equals Vne + 10%) of the aircraft.

I inspected the skin surfaces for signs of bending associated with overload failure in flight possibly due to the two ninety (90) degree turns but nothing was found.

EXHIBIT B

Moody Aviation Flight and/or Maintenance Activities
Covenant Not To Sue, Liability Release and Assumption Of Risk Agreement

EXHIBIT

3

Participant's Name: Joodan Lee	Participant's Student ID -OR- Driver's License Number LEEJ077Q2	
Emergency Contact Name (must not be participating) Yuki Joy Lee	Relationship wife	Phone Number 858-366-5790

I, the undersigned, hereby affirm that I am aware that flying and maintenance activities associated with them have inherent and unforeseeable risks which may result in serious injury or death. I understand and agree that Moody Aviation instructors, Moody Aviation and The Moody Bible Institute, and their respective employees, officers, agents, volunteers, contractors or assigns, and other Moody Aviation student pilots or trainees (hereinafter referred to as "Released Parties") shall NOT be held liable or responsible in any way for any injury, death or other damages to me, my family, estate, heirs or assigns that may occur as a result of or related to my participation in flying aircraft, flying in aircraft, flight instruction, aircraft rental, aircraft operations, ramp operations, maintenance or shop activities, use of hand or power tools or any associated activities involved with these activities (hereinafter referred to as "Aircraft Activities") or as a result of the negligence of any party, including the Released Parties, whether passive or active, direct or indirect.

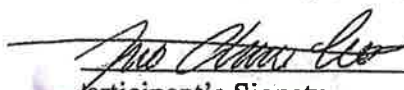
In consideration of being allowed to participate in Aircraft Activities related to Moody Aviation, I hereby personally assume all risks of Aircraft Activities, whether foreseen or unforeseen, that may befall me while I am participating in these activities. I further voluntarily release, waive and hold harmless the Released Parties from any claim, demand or lawsuit by me, my family, estate, heirs or assigns, arising out of my participating in Aircraft Activities, including claims arising during any course of training or after I receive my pilot certification(s) or arising from being a passenger incident to Aircraft Activities, for any injuries, including death, and for any loss or damage to property related to my participating in Aircraft Activities.

I also understand that Aircraft Activities are physically demanding, and that by participating I am assuring Moody Aviation I am in good health and of sound mind. I covenant not to sue or institute any actions in law or equity against the Released Parties related to Aircraft Activities and covenant I will not hold the Released Parties responsible for events, injuries or death resulting from my physical condition, limitations or incapacitation.

I further state that I am of lawful age and legally competent to sign this Liability Release or that I have acquired the written consent of my parent or guardian. *By signing below the parent or guardian of the above participant gives permission for them to participate in the flying activities and agree to the provisions of this document.*

I further agree that if any provision of this Agreement is found to be unenforceable or invalid, that provision may be severed from this Agreement and the remainder of this Agreement shall then be construed as though the unenforceable provision had never been contained therein and to honor, as nearly as possible, the original intention of the parties.

I understand the terms herein are contractual and not merely for recital and attest that I have signed this document of my own free act and with the knowledge that I am hereby waiving legal rights and assuming risks. I have fully informed myself of the contents of this Covenant Not To Sue, Liability Release and Assumption Of Risk Agreement by reading it before I signed it on behalf of myself and my heirs.


Participant's Signature

5/19/18
Date

Parent or Guardian's Signature (if applicable)

DEP EX 3
Date LEE, YUKI 11/19/21